THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 172 of 2005
Old F.A.F.O. No. 154 of 1983

Prem Kumar Vishnoi, Son of Shri Rameshwar Prasad,
C/O Uttarakhand General Stores, Peepal Koti,
District Chamoli.
(Claimant)

… **Appellant.**

Versus

1. U.P. State Road Transport Corporation, Lucknow, through its General Manager.
2. The Oriental Insurance Co. Ltd.,'L.I.C. Building Hazratganj, Lucknow.

… **Respondents.**

Sri R.P.Nautiyal, learned counsel for the appellant.
Sri A.N.Sharma, Advocate, learned counsel for respondent 1.

Date June 13, 2006.

(Hon'ble B.S.Verma, J.)

This appeal has been preferred under Section 110-D of the Motor Vehicles Act 1939 ***(in short the Act)*** against the judgment and order dated 6-11-1981 passed by the Motor Accident Claims Tribunal/ District Judge, Chamoli ***(in short the Tribunal)*** in Motor Accident Claim Petition No. 50 of 1978, Prem Kumar Vishoni Vs. U.P.S.R.T.C. and another, whereby the claim petition was dismissed on the ground that there was no negligence on the part of driver of the ill-fated bus No. U.T.F.-3652 and the accident was result of slippery road in rainy season.

At the outset, it may be mentioned that in the motor accident involving bus No. UTF-3652 belonging to the respondent UPSRTC, beside the injured Prem Kumar Vishnoi, one Bharat Singh Pal died as a result of fatal injuries sustained by him and some other also sustained grievous injuries. It is pertinent to mention that Smt. Bhagirathi Devi widow of late Sri Bharat Singh Pal filed claim petition before the learned Tribunal, which too was dismissed and the appeal preferred by the claimant before the Allahabad High

Court was registered as F.A.F.O. No. 720 of 1983, which was ultimately transferred to this Court and registered as A.O. No. 1070 of 2001. This appeal was decided by this Court vide judgment dated 24-4-2006 and the same was allowed.

Relevant facts giving rise to the present appeal are that claimant-appellant Prem Kumar Vishnoi filed a claim petition for compensation of Rs. 70,000/- against the O.P.–respondents in respect of injuries sustained by him, involving bus No. UTF-3652, belonging to the respondent-U.P.S.R.T.C. The injured was going from Pipalkoti to Rishikesh on 10-7-1977. The bus was being driven rashly and negligently by its driver with the result it fell in a ravine at Dewalibagarh and a number of passengers died and several suffered grievous injuries including injured- claimant as well as Bharat Singh Pal, who ultimately succumbed to his. The injured, aged 27 years, was earning Rs. 1000/- per month from business and insurance agency. The claimant has claimed compensation of Rs. 70,000/- on different counts as mentioned in the claim petition.

The O.P.Nos. 1 and 2 contested the claim petition and alleged in their written statement that the driver of the bus was not negligent and the bus was going at normal speed. When the bus reached the spot, the driver in order to avoid a ditch on the left hill side turned the bus towards right but unfortunately the Kuchha wall on the right side gave way and the front wheel of the bus went out the road, but he could not control the vehicle which fell into the ravine thereby causing injuries to the passengers including the deceased. Accordingly to them, the road was slippery and as the ***kuccha*** portion of the wall gave way, the accident occurred.

On the pleadings of the parties, the learned Tribunal framed following issues:-

1. Whether Govind Singh deceased was driving bus no. U.T.F. 3652 of the defendant no.1 rashly and negligently or the

accident was the result of slippery road in the rainy season and the breaking of the Katcha road on the Khad side? Its effect?

2. Whether the plaintiff is entitled to recover any amount by way of damages? If so, what and from which of the two defendants?

After recording the evidence adduced by the parties and perusing the same, the learned Tribunal took up Issue No. 1 for decision. The learned Tribunal has only placed reliance on the sole testimony of D.W.1 Lalita Prasad, who being an employee of the opposite parties was naturally interested in saving the skin of the opposite parties from the liability of compensation. It was held by the learned Tribunal that the claimant has failed to prove the negligence on the part of the driver.

On Issue No.2, the learned Tribunal has come to the conclusion that the claimant-appellant suffered by him in the motor accident and he was treated in a Delhi based Hospital. Ultimately, the learned Tribunal came to the conclusion that the claimant was entitled to get compensation of Rs. 25,000/- as against the U.P.S.R.T.C. Ultimately finding that the accident was not caused due to fault on the part of the driver, the petition for compensation was dismissed. Aggrieved the claimant has come up before this Court.

In this appeal, the impugned order of the Tribunal has been assailed only on the point that the claimant has proved on record that the motor accident was caused due to sole rashness and negligence on the part of the driver of the vehicle.

I have heard learned counsel for the parties and have examined the evidence placed on record including the impugned order.

In the course of argument, the learned counsel for the appellant has submitted that the present appeal is squarely covered by the judgment dated 24-4-2006 passed in A.O. No. 1070 of 2001, Smt. Bhagirathi Devi Vs. General Manager, UPSRTC and others. It has been urged that the facts of the present appeal are similar to that of the decided A.O. No. 1070 of 2001 and this case may be decided in terms of earlier judgment so far as the finding on the point of negligence is concerned. I have perused the judgment dated 24-4-2006 passed in A.O. No. 1070 of 2001, which had arisen out of same motor accident. This Court has already held that the accident in question was the result of the rashness and negligence on the driver of the offending bus.

The claimant in order to prove negligence on the part of the driver of the ill-fated bus has examined P.W.3, Gabar Singh, who was very travelling by the said vehicle at the time of accident. This witness has given ocular account of the accident. He has clearly stated that the driver was driving the vehicle at high speed. He was cross-examined on behalf of the O.P.Nos. 1 and 2. He has denied the suggestion that there was rain during the past 2-3 days and he clearly stated that the road was dry. He has denied the presence of ditch on the spot, rather he has stated that the road was 15 ft. broad at the relevant place of accident. In the cross-examination also, this witness stated that the speed of the bus was high than the normal speed. This evidence of P.W.3 Gabar Singh is sufficient to make out a case in favour of the claimant that the driver of the bus was driving the vehicle at high speed. Admittedly, the bus was being driven on the hill roads of Uttaranchal in the year 1977. It is the moral duty of the driver of the hill roads to be vigilant while driving the vehicles before crossing the curves. The contention of the O.P.No. 1 that the road was slippery and wet due to rains is not acceptable in view of the specific statement of the P.W.3 Gabar Singh, who stated that there was no rain during the past 2-3 days preceding the date of accident. It has not been shown or suggested that P.W.3, Gabar

Singh, was in any way interested to give false statement against the driver.

So far as the testimony of D.W.1 conductor of the bus is concerned, a complete reading of the deposition of D.W.1 goes to show that no-where he has stated in affirmative that the driver of the bus was driving the vehicle at normal speed and he was careful and cautious while driving the bus. The O.P. No. 1 in its written statement had taken a positive stand that there was a ditch on the left side of the road, when the accident took place, but it is surprising that they could not prepare or file any site plan of the place of accident to substantiate their contention. D.W.1 in his cross-examination has admitted that at the time of accident, there was no rains. From the side of the claimant, Copy of report of Case Crime No. 18, under Sections 279/304 IPC, G.D. No. 17, dated 10-7-1977 (paper no. 29-C/3-4) was filed. In this report, it has been mentioned by the Sub Inspector of Police that on inspection of the spot and investigation, it was bound that the bus was driven at high speed and negligently by the driver Govind Singh, thereby the bus fell in the ***Khud*** and therefore, the case was registered under Section 279/304 IPC at Crime No.18 of P.S. Karnprayag. From the side of the claimant, site plan of the place of accident prepared by the police was filed as paper no. 59-C. The genuineness of this document is admitted to the O.P.No.1 and an endorsement to that effect was recorded by the counsel for the O.P.No.1 on the reverse side of the document. In this site plan, no ditch had been pointed out on the road towards left side by the investigating officer though all other details are there. The position of the road appears to be ***pucca***. It appears that the learned Tribunal lost sight of these documents, which were sufficient to make out a prima facie case that the accident had taken place in the manner as alleged by the claimant. Under the provisions of the Motor Vehicles Act, strict proof of the fact is not required to prove the negligence.

Having considered all the facts and circumstances coupled with the ocular testimony of P.W.3 Gabar Singh on record and having considered the documents placed on record, I am of the view that the accident in question was caused due to rash and negligent driving by the driver of the ill-fated bus. Accordingly the Issue No.1 is decided in the manner that the accident in question was caused due to rash and negligent driving by the driver of the bus and not account of the road being slippery or otherwise. The finding recorded by the Tribunal on Issue No.1 is set aside.

As observed earlier, the finding of the Tribunal regarding quantum of compensation of Rs.25,000/- has not been assailed, therefore, I hold that the claimant-appellant is entitled to this amount as compensation.

Accordingly, the respondent no. 1-U.P.S.R.T.C. is liable to pay compensation of Rs. 25,000/- to the claimant-appellant. The respondent nos. 1 shall also pay simple interest on the compensation amount @ 7, 1/2% per annum from the date of claim petition 1-7-1988 till the date of payment.

In view of the discussion aforesaid, the appeal deserves to be allowed. The finding of the learned Tribunal is reversed on Issue No.1 as mentioned above.

The appeal is allowed. The claimant-appellant shall be entitled to get compensation of Rs. 25,000/- along with simple interest @ Rs. 7,1/2% per annum from 1-7-1998 till the date of payment. The compensation along with interest shall be payable by the O.P.-respondent no. 1, the owner of the vehicle. No order as to costs.

(B.S.Verma, J.)

RCP